

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 78 OF 2003

1. OMAR SAID AWAH
2. FAHIMA SAID AWADH PLAINTIFFS

- VERSUS -

MWAA SOODI BINTI SAHIBU WAMBUANA DEFENDANTS

R U L I N G

The hearing is an application by Chamber Summons dated 15th April, 2003 in which the applicant seeks an order of an injunction. However, the Defendant raised a Preliminary point of objection which if it succeeds may determine the whole suit. The Notice filed on 30th April, 2003 is on the following grounds:

1. That the matter is Res Judicata having been the issue for determination in RMCC. No. 2361 of 2002 Kibibi Shaibu – vs – Fatma Abdalla.
2. That the matter is sub-judice as there is pending an appeal being HCCA No.16 of 2003 Farida Abdalla –vs- Kibibi Shaibu.
3. That the plaint filed herein is defective in that it fails to comply with the provisions of order VII rule 1 (I) (e) of the Civil Procedure Rules.

I have looked at the pleadings in case RMCC 2361 of 2002 which give rise to Appeal HCCA No. 10 of 2003 and note that in that suit the parties were KIBIBI SHAIBU –VS- FATMA ABDALLA in which the claim by the plaintiff was for vacant possession of the same suit properly as in the current one. The current suit the issue for determination as I understand it is whether or not the Defendant is entitled to have the suit properly registered and a certificate issued in her personal names. Even without any further, it is clear at this point that the issues for determination as well as the parties are not the same save for the property in issue.

The issues are therefore not Res-judicata and the provisions of Section 7 of the Civil Procedure Act do not apply. Consequently the Preliminary objection is dismissed.

Dated and Delivered at Mombasa this 11th day of July, 2003.
P.M. TUTUI
COMMISSIONER OF ASSIZE